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CLERK U.S. DISTRICT COURT
CENTRAL DIST. OF CALIF.
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U.S. BANK NATIONAL ASSOCIATION

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION

14 JAMES WICKSNIN, JR.,

15 Plaintiff,

17 v.

18 U.S. BANK NATIONAL
ASSOCIATION, a Delaware
Corporation, and DOES 1-10, inclusive,

19 Defendants.

Case No. SACV12 - 02007 RNB

(Orange County Superior Court Case
No. 30-2012-00591837-CU-WT-CJC)

DEFENDANT'S NOTICE OF
REMOVAL OF CIVIL ACTION TO
FEDERAL COURT

By Fax

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

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N/S

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. § 1332, Defendant U.S.
3 Bank National Association ("Defendant" or "U.S. Bank") hereby removes the above-
4 captioned matter from the Superior Court of the State of California in and for the
5 County of Orange, to this Court. In support of its request, Defendant states as follows:

6 **I. INTRODUCTION**

7 1. This case is hereby removed from state court to federal court
8 pursuant to 28 U.S.C. § 1332 because at the time the Complaint was filed, and at this
9 time: 1) complete diversity of citizenship exists between the parties; and 2) the claims
10 of Plaintiff James Wicksnin, Jr., exceed \$75,000.00 exclusive of interest and costs.
11 Therefore, this Court has original jurisdiction under 28 U.S.C. § 1332(a).

12 **II. THE STATE COURT ACTION IN THIS CASE**

13 2. On August 17, 2012 an action was commenced in the Superior
14 Court of the State of California in and for the County of Orange entitled *Wicksnin v.*
15 *U.S. Bank National Association, et al.*, Case No. 30-2012-00591837-CU-WT-CJC. A
16 true and correct copy of the Complaint is attached hereto as Exhibit "A." The
17 Complaint alleges: (1) Breach of Contract; (2) Retaliation [CAL. LABOR CODE
18 § 1102.5]; (3) Failure to Pay Earned Wages [CAL. LABOR CODE §§ 204, 206, 210,
19 218.5, and 218.6]; (4) Failure to Pay Overtime Wages [CAL. LABOR CODE §§ 204,
20 510, and 1194]; (5) Waiting Time Penalties [CAL. LABOR CODE §§ 201-203]; (6)
21 Failure to Allow Meal Breaks [CAL. LABOR CODE §§ 226.7 and 512]; (7) Intentional
22 Failure to Provide Accurate Itemized Wage Statements [CAL. LABOR CODE § 226]; (8)
23 Wrongful Termination in Violation of Public Policy; (9) Unfair Business Practices
24 [CAL. BUS. & PROF. CODE § 17200]; (10) Defamation; and (11) Violation of Labor
25 Code Sections 1050 *et seq.*

26 3. Defendant filed a general denial to the Complaint in the Superior
27 Court of the State of California in and for the County of Orange on November 15,
28 2012. A true and correct copy of the General Denial is attached hereto at Exhibit "B."

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III. JOINDER

4. Defendant is not aware of any other defendant having been served with a copy of Plaintiff's Complaint.

IV. BASIS FOR FEDERAL JURISDICTION UNDER 28 U.S.C. § 1332

A. The Parties

5. Defendant is informed and believes that Plaintiff was at the time of the filing of this action, and still is, a citizen of California. (*See* Complaint ¶ 1.)

6. Defendant was at the time of the filing of this action, and still is, a citizen of a state other than California. Defendant was and is a national banking association with its main office in Cincinnati, Ohio. Accordingly, Defendant was and is a citizen of Ohio. *See* 28 U.S.C. § 1348 ("All national banking associations shall, for purposes of all other actions by or against them, be deemed citizens of the States in which they are respectively located"); *Wachovia Bank v. Schmidt*, 546 U.S. 303, 307 (2006) (holding that a national bank, for purposes of 28 U.S.C. § 1348, "is a citizen of the state in which its main office, as set forth in its articles of association, is located").

7. It appears from the caption that only U.S. Bank is a defendant in this matter. The caption lists only U.S. Bank and Does 1-10¹, inclusive as defendants. It is unclear whether Plaintiff intended to include an additional individual defendant because Plaintiff's Complaint internally refers to one Michael Allen as a "defendant." (Complaint ¶ 3.) Regardless of Plaintiff's intent, codefendants not served need not join in the removal for the removal to be proper, *Destino v. Reiswig*, 630 F.3d 952, 955-57 (9th Cir. 2011), and Defendant is not aware that Plaintiff has served Mr. Allen. More importantly, Defendant is informed and believes that Mr. Allen is a citizen of Texas. (Declaration of Linda Allen ("Allen Decl.") ¶ 4.)

8. Complete diversity of citizenship thus exists in accordance with 28 U.S.C. § 1332(a)(1) because Plaintiff has been a California citizen at all relevant

¹ Plaintiff filed a pleading in California state court. There are no "Doe Defendants" in federal district court.

1 times, Defendant has been a citizen of a state other than California at all relevant
2 times, and no other defendant has yet been served.

3 B. Amount in Controversy

4 9. By Defendant's assessment, based on the allegations in the
5 Complaint, the amount in controversy exceeds the \$75,000.00 jurisdictional
6 minimum, excluding interest and costs. Plaintiff seeks to recover money damages for:
7 past loss of earnings, wages, overtime, and other employee benefits; mental and
8 emotional distress; penalties under the California Labor Code; and attorneys' fees.
9 Plaintiff also seeks civil penalties and punitive damages. (See Complaint ¶¶ 19, 29-
10 31, 34-35, 40-41, 48, 52, 61-62, 72, 87-89, 95-96; and Prayer ¶¶ 1-9). Assuming for
11 the purposes of removal only that Plaintiff's allegations are true and that he can
12 legally recover, Plaintiff's award for back pay, unpaid overtime, penalties pursuant to
13 Cal. Labor Code § 226, waiting time penalties pursuant to Cal. Labor Code § 203,
14 emotional distress damages, and punitive damages will be approximately
15 **\$520,608.75**. This amount *excludes* Plaintiff's possible front pay and reasonable
16 attorneys' fees, both of which are properly considered when determining the amount
17 in controversy.² This amount also *excludes* damages that Plaintiff may be seeking for
18 breach of contract, defamation, and Cal. Labor § 1050, as Defendant cannot presently
19 ascertain the amount Plaintiff may be seeking.

20 10. Plaintiff does not specifically allege an amount in damages in the
21 Complaint or allege that the amount in controversy is less than \$75,000.00. Where a
22 complaint does not state a total amount in controversy, Defendant need only show by
23 a preponderance of the evidence that the amount in controversy requirement has been
24

25 ² Front pay is properly considered when determining the amount in controversy.
26 Plaintiffs are awarded front pay "in lieu of reinstatement" to provide damages for lost
27 earnings. *Melendez v. HMS Host Family Rests., Inc.*, No. CV 11-3842 ODW (CWx),
28 2011 WL 3760058, at *3 (C.D. Cal. Aug. 25, 2011). Attorneys' fees are also properly
considered when determining the amount in controversy for the purposes of removal.
See Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1156 (9th Cir. 1998) ("where an
underlying statute authorizes an award of attorneys' fees . . . such fees may be
included in the amount in controversy").

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met. *Caus v. Miles, Inc.*, 980 F.2d 564, 566-67 (9th Cir. 1992); *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 189 (1936).

11. The calculations below detail the amount in controversy, and take into account only back pay, unpaid overtime, civil penalties, emotional distress, and punitive damages. All calculations assume the following: (1) liability is established; (2) back pay is calculated based on the time between the adverse employment action and the date of judgment³; (3) emotional distress damages are calculated as one year of the employee's former rate of pay⁴; and (4) punitive damages are calculated as five times the back pay award⁵.

12. Plaintiff's employment was terminated on August 19, 2011.⁶ (Allen Decl. ¶ 2.) At termination, Plaintiff's hourly rate of pay was \$18.50 per hour.⁷ (Allen Decl. ¶ 3.) Accordingly, if liability were found, Plaintiff's claim for back pay from the date of his termination to an estimated date of judgment one year from the date the Complaint was filed is approximately \$76,960.00 (\$18.50 per hour x 40 hours per week x 104 weeks).

13. Plaintiff also claims unpaid overtime. Plaintiff earned \$17.00 per hour from his hire date of December 7, 2009, to May 31, 2010, a period of 25 weeks.

³ See *Lloyd v. Conseco Finance Corp.*, No. CV 00-10452 MMM (RNBx), 2001 WL 36097624, at *7 (C.D. Cal. Oct. 19, 2001) ("Generally, a plaintiff is entitled to an award of back pay from the date of the discriminatory or retaliatory termination through the date of judgment.").

⁴ While it is difficult to estimate emotional distress damages at the outset of the case, it is reasonable and in fact conservative to estimate that Plaintiff could be awarded the equivalent of one-year's earnings in emotional distress. *Richmond v. Allstate Ins. Co.*, 897 F.Supp. 447, 450 (S.D. Cal. 1995) (taking note that emotional distress damages are "potentially substantial" although plaintiff's pleadings were vague).

⁵ In California, punitive damages can reach up to ten times the back pay award. See *Equal Emp't Opportunity Comm'n v. Farmer Bros. Ins.*, 31 F.3d 891, 904 (9th Cir. 1994) (affirming district court's punitive damages award amounting to ten times the back pay award). To be conservative, a five-times multiplier will be applied here.

⁶ Plaintiff's Complaint erroneously alleges that Plaintiff was terminated on August 19, 2010.

⁷ Plaintiff's Complaint erroneously alleges that Plaintiff's rate of pay at termination was \$19.50 per hour.

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(Allen Decl. ¶ 2.) From June 1, 2010, to his termination on August 19, 2011, a period of 63 weeks, Plaintiff earned \$18.50 per hour. (Allen Decl. ¶ 3.) Plaintiff alleges he was required to report to work 30 minutes before opening and to stay behind one hour after closing. (Complaint ¶ 10.) Assuming one hour per day of overtime at one-and-a-half times his hourly rate, if liability were established Plaintiff could recover \$11,928.75 in unpaid overtime ($\$17.00 \times 1.5 \times 5 \text{ hours per week} \times 25 \text{ weeks} + \$18.50 \times 1.5 \times 5 \text{ hours per week} \times 63 \text{ weeks}$).

14. Additionally, Plaintiff claims damages of \$4,000.00 for Defendant's alleged violation of California Labor Code § 226(a), and waiting time penalties pursuant to California Labor Code §§ 201-203. Where an employer willfully fails to pay wages due within 72 hours of termination, the employee's wages "continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." CAL. LABOR CODE § 203. Assuming liability is established, Plaintiff could recover the statutory maximum of 30 days of penalties, or \$4,440.00 ($\$18.50 \times 8 \text{ hours per day} \times 30 \text{ days}$). Together, these claims add an additional \$8,440.00 to Plaintiff's recovery if liability is established.

15. Finally, Plaintiff also claims emotional distress and punitive damages. Assuming, conservatively, that Plaintiff's claim for emotional distress damages amounts to only one year of earnings, that claim may be valued at \$38,480.00 if liability were established ($\$18.50 \times 40 \text{ hours per week} \times 52 \text{ weeks per year}$). Assessing punitive damages similarly conservatively and applying a multiplier of five to the underlying back pay damages described above, punitive damages amount to \$384,800.00 ($\$76,960.00 \times 5$).

16. Accordingly, assuming for the purposes of removal only that Plaintiff's allegations are true and that he can legally recover (which Defendant denies), Plaintiff's award for back pay, unpaid overtime, damages pursuant to Cal. Labor Code § 226(a), waiting time penalties pursuant to Cal. Labor Code § 203,

1 emotional distress damages, and punitive damages will be approximately
2 \$520,608.75. This amount significantly exceeds the \$75,000.00 amount in
3 controversy requirement—even without considering attorneys’ fees and front pay, and
4 any additional damages Plaintiff may claim for breach of contract, defamation, and
5 Cal. Labor § 1050.

6 17. Thus, the amount in controversy exceeds the jurisdictional
7 minimum of \$75,000.00 set forth in 28 U.S.C. § 1332(a), exclusive of costs and
8 interest.

9 **V. COMPLIANCE WITH STATUTORY REQUIREMENTS**

10 18. This action is a civil action over which this Court has original
11 jurisdiction under 28 U.S.C. § 1332, in that it is a civil action between citizens of
12 different states and the amount in controversy exceeds the sum of \$75,000.00,
13 exclusive of interest and costs, and is one which may be removed to this Court by
14 Defendant pursuant to the provisions of 28 U.S.C. § 1441(a).

15 19. Pursuant to 28 U.S.C. § 1446(a), Defendant attaches as Exhibit
16 “A” a true and correct copy of the Complaint. This the only process, pleading, or
17 order in the State Court’s file that has been served on Defendant up to the date of
18 filing this Notice of Removal.

19 20. In accordance with 28 U.S.C. § 1446(b), this Notice is timely filed
20 with this Court. Pursuant to 28 U.S.C. § 1446(b), “the notice of removal of a civil
21 action shall be filed within thirty days after the receipt by the defendant, through
22 service or otherwise of a copy of the initial pleading setting forth the claim for relief
23 upon which such action or proceeding is based.” 28 U.S.C. § 1446(b). Service of
24 process of Plaintiffs’ Complaint on Defendant was complete on October 18, 2012.
25 (See Exhibit A, Summons and Complaint personally served on October 18, 2012.)
26 Accordingly, this Notice is timely.

27 21. As required by 28 U.S.C. § 1446(d), Defendant will provide
28 written notice of the filing of this Notice of Removal to Plaintiff’s counsel of record,

1 and will promptly file a copy of this Notice of Removal with the Clerk for the
2 Superior Court of the State of California in and for the County of Orange.

3 WHEREFORE, Defendant requests that these proceedings, entitled *Wicksnin v.*
4 *U.S. Bank National Association et al.*, Case Number 30-2012-00591837-CU-WT-CJC
5 currently pending in the Superior Court of California in and for the County of Orange,
6 be removed to this Court.

7 Dated: November 16, 2012

WINSTON & STRAWN LLP

9
10 By: Emilie C. Woodhead

Joan B. Tucker Fife

Emilie C. Woodhead

Attorneys for Defendant

U.S. BANK NATIONAL ASSOCIATION

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

EXHIBIT A

10-18-12 110

SUM-100

**SUMMONS
(CITACION JUDICIAL)****NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

U.S. BANK National Association, a Delaware Corporation; and DOES 1 through 10, inclusive

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

James Wicksnin, Jr.

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)**ELECTRONICALLY FILED**
Superior Court of California,
County of Orange**08/17/2012 at 10:03:24 AM**Clerk of the Superior Court
By Fidel Ibarra, Deputy Clerk**NOTICE!** You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form. If you want the court to hear your case, there may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. (AVISO) Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en este corte y hacer que se entregue una copia al demandado. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le queda más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte la podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:
(El nombre y dirección de la corte es):

700 Civic Center Drive West, Santa Ana, CA 92701

CASE NUMBER:
(Número del Caso): 30-2012-00591837-CU-WT-CJC

Judge Derek W. Hunt

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
Christopher Olsen, Esq., 1010 Second Ave., Suite 1835, San Diego, CA 92101; (619) 550-9352

DATE: 08/17/2012 ALAN CARLSON, Clerk of the Court

Clerk, by
(Secretario)

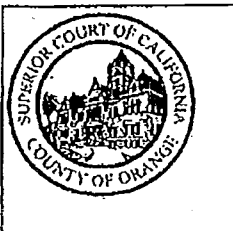
Fidel Ibarra

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)

Fidel Ibarra

**NOTICE TO THE PERSON SERVED:** You are served

1. ☐ as an individual defendant.
2. ☐ as the person sued under the fictitious name of (specify):

3. ☒ on behalf of (specify): U.S. Bank

- under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☐ other (specify):

4. ☐ by personal delivery on (date):Form Adopted for Mandatory Use
Judicial Council of California
SUM-100 (Rev. July 1, 2009)**SUMMONS**Page 1 of 1
Code of Civil Procedure §§ 412.20, 405
www.courtinfo.ca.gov

Exhibit A_009

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Christopher Olsen (SBN 236928) Olsen Law Offices 1010 Second Ave, Ste. 1835 San Diego, CA 92101 TELEPHONE NO.: (619) 550-9352 FAX NO.: ATTORNEY FOR (Name): James Wicksmann, Jr.		FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California, County of Orange 08/17/2012 at 10:03:24 AM Clerk of the Superior Court By Fidel Ibarra, Deputy Clerk
SUPERIOR COURT OF CALIFORNIA, COUNTY OF Orange STREET ADDRESS: 700 Civic Center Drive West MAILING ADDRESS: 700 Civic Center Drive West CITY AND ZIP CODE: Santa Ana, CA 92701 BRANCH NAME: Central Justice Center		
CASE NAME:		
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less) Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)		
CASE NUMBER: 3D-2012-00601837-CU-VT-CJC JUDGE: Judge Derek W. Hunt DEPT:		

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<input type="checkbox"/> Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) <input type="checkbox"/> Other PIP/DWD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PIP/DWD (23) <input type="checkbox"/> Non-PIP/DWD (Other) Tort <input type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (10) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PIP/DWD tort (35) <input type="checkbox"/> Employment <input checked="" type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	<input type="checkbox"/> Contract <input checked="" type="checkbox"/> Breach of contract/warranty (08) <input type="checkbox"/> Rule 3.740 collections (00) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) <input type="checkbox"/> Real Property <input type="checkbox"/> Eminent domain/inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) <input type="checkbox"/> Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	<input type="checkbox"/> Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) <input type="checkbox"/> Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) <input type="checkbox"/> Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) <input type="checkbox"/> Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties	d. <input type="checkbox"/> Large number of witnesses
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve	e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
c. <input type="checkbox"/> Substantial amount of documentary evidence	f. <input type="checkbox"/> Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **11**

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **August 8, 2012**
 Christopher Olsen, Esq.

(TYPE OR PRINT NAME) (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
 Judicial Council of California
 CM-010 (Rev. July 1, 2007)

CIVIL CASE COVER SHEET

Page 1 of 2
 Cal. Rules of Court, rules 3.30, 3.220, 3.400-3.403, 3.740;
 Cal. Standards of Judicial Administration, std. 3.10
 www.courtinfo.ca.gov

CM-010

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort Auto (22)—Personal Injury/Property Damage/Wrongful Death Uninsured Motorist (46) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto) Other PUPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort Asbestos (04) Asbestos Property Damage Asbestos Personal Injury/Wrongful Death Product Liability (not asbestos or toxic/environmental) (24) Medical Malpractice (45) Medical Malpractice—Physicians & Surgeons Other Professional Health Care Malpractice Other PUPD/WD (23) Premises Liability (e.g., slip and fall) Intentional Bodily Injury/PD/WD (e.g., assault, vandalism) Intentional Infliction of Emotional Distress Negligent Infliction of Emotional Distress Other PUPD/WD Non-PUPD/WD (Other) Tort Business Tort/Unfair Business Practice (07) Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08) Defamation (e.g., slander, libel) (13) Fraud (16) Intellectual Property (19) Professional Negligence (25) Legal Malpractice Other Professional Malpractice (not medical or legal) Other Non-PUPD/WD Tort (35) Employment Wrongful Termination (38) Other Employment (15)	Contract Breach of Contract/Warranty (06) Breach of Rental/Lease Contract (not unlawful detainer or wrongful eviction) Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence) Negligent Breach of Contract/Warranty Other Breach of Contract/Warranty Collections (e.g., money owed, open book accounts) (09) Collection Case—Seller Plaintiff Other Promissory Note/Collections Case Insurance Coverage (not provisionally complex) (18) Auto Subrogation Other Coverage Other Contract (37) Contractual Fraud Other Contract Dispute Real Property Eminent Domain/Inverse Condemnation (14) Wrongful Eviction (33) Other Real Property (e.g., quiet title) (28) Writ of Possession of Real Property Mortgage Foreclosure Quiet Title Other Real Property (not eminent domain, landlord/tenant, or foreclosure) Unlawful Detainer Commercial (31) Residential (32) Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential) Judicial Review Asset Forfeiture (05) Petition Re: Arbitration Award (11) Writ of Mandate (02) Writ—Administrative Mandamus Writ—Mandamus on Limited Court Case Matter Writ—Other Limited Court Case Review Other Judicial Review (39) Review of Health Officer Order Notice of Appeal—Labor Commissioner Appeals	Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403) Antitrust/Trade Regulation (03) Construction Defect (10) Claims Involving Mass Tort (40) Securities Litigation (20) Environmental/Toxic Tort (30) Insurance Coverage Claims (arising from provisionally complex case type listed above) (41) Enforcement of Judgment Enforcement of Judgment (20) Abstract of Judgment (Out of County) Confession of Judgment (non-domestic relations) Sister State Judgment Administrative Agency Award (not unpaid taxes) Petition/Certification of Entry of Judgment on Unpaid Taxes Other Enforcement of Judgment Case Miscellaneous Civil Complaint RICO (27) Other Complaint (not specified above) (42) Declaratory Relief Only Injunctive Relief Only (non-harassment) Mechanics Lien Other Commercial Complaint Case (non-tort/non-complex) Other Civil Complaint (non-tort/non-complex) Miscellaneous Civil Petition Partnership and Corporate Governance (21) Other Petition (not specified above) (43) Civil Harassment Workplace Violence Elder/Dependent Adult Abuse Election Contest Petition for Name Change Petition for Relief From Late Claim Other Civil Petition
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CM-010 (Rev. July 8, 2007)

CIVIL CASE COVER SHEET

Page 2 of 2

Exhibit A_011

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9 JAMES WICKSNIN, JR.

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

08/17/2012 at 10:03:24 AM

Clerk of the Superior Court
By Fidel Ibarra, Deputy Clerk

10 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF ORANGE

12 JAMES WICKSNIN, JR., an individual,
13 Plaintiff,

14 .v.

15 U.S. BANK National Association, a Delaware
16 Corporation; and DOES 1 through 10, inclusive,

17 Defendants.

Case No.: 30-2012-00591837-CU-WT-CJC

COMPLAINT FOR:

1. BREACH OF CONTRACT;
2. RETALIATION IN VIOLATION OF LABOR CODE SECTIONS 1102.5, *ET SEQ.*;
3. FAILURE TO PAY EARNED WAGES IN VIOLATION OF LABOR CODE SECTIONS 204, 206, 210, 218.5, AND 218.6; —
4. FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF LABOR CODE SECTIONS 204, 510, AND 1194;
5. WAITING TIME PENALTIES PURSUANT TO LABOR CODE SECTIONS 201-203;
6. FAILURE TO ALLOW MEAL AND REST BREAKS IN VIOLATION OF LABOR CODE SECTIONS 226.7 AND 512;
7. INTENTIONAL FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226;
8. WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY;
9. UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND PROFESSIONS CODE SECTIONS 17200, *ET SEQ.*;
10. DEFAMATION; AND
11. VIOLATION OF LABOR CODE SECTIONS 1050, *ET SEQ.*

DEMAND FOR JURY

Judge Derek W. Hunt
C-24

- 1 -

Complaint

Exhibit A_012

1 Plaintiff, JAMES WICKSNIN, JR., hereby brings his complaint against the above-named
2 Defendants and states and alleges as follows:

3 **PRELIMINARY ALLEGATIONS**

4 1. At all times material herein, Plaintiff, JAMES WICKSNIN, JR. (hereinafter referred
5 to as "Plaintiff"), was and is a resident of the State of California, County of Orange.

6 2. Plaintiff is informed and believes and thereon alleges that Defendant U.S. BANK
7 National Association (hereinafter individually referred to as "Defendant US BANK" and
8 collectively referred to as "Defendants") is a Delaware corporation, was at all times mentioned in
9 this complaint duly licensed to do business, was and is doing business, under and by virtue of the
10 laws of the State of California, in the County of Orange.

11 3. Plaintiff is informed and believes and thereon alleges that Michael Allen
12 (hereinafter referred to as "Defendant Allen") is an employee of Defendant U.S. Bank and a
13 resident of the County of Orange in the State of California.

14 4. The true names and capacities, whether individual, corporate, associate or otherwise
15 of DOES 1 through 10 are unknown to plaintiff who therefore sues these defendants under said
16 fictitious names. Plaintiff is informed and believes that each of the defendants named as a Doe
17 defendant is legally responsible in some manner for the events referred to in this complaint, either
18 negligently, willfully, wantonly, recklessly, tortiously, strictly liable, statutorily liable or otherwise,
19 for the injuries and damages described below to this Plaintiff. Plaintiff will in the future seek leave
20 of this court to show the true names and capacities of these Doe defendants when it has been
21 ascertained.

22 5. Plaintiff is informed and believes, and based thereon alleges, that each defendant
23 acted in all respects pertinent to this action as the agent of the other defendants, carried out a joint
24 scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are
25 legally attributable to the other defendants.

26 6. In or around December 2008, in the County of Orange, and during the term of
27 Plaintiff's employment, Plaintiff and Defendant U.S. Bank entered into an employment agreement
28

1 which included oral, written and implied-in-fact agreements. The basic terms of the agreement
2 provided that Plaintiff's employment would be secure for as long as his performance was
3 satisfactory, that Plaintiff would not be terminated without good cause, that his job security would
4 not be threatened, that he would not be required to perform unlawful activities, that he would earn
5 agreed-upon wages, and that he would be compensated fairly and legally for all hours worked. At
6 all times, Plaintiff performed his job in a satisfactory manner.

7 7. On information and belief, Plaintiff alleges that he was terminated without good
8 cause and despite his continued satisfactory job performance on or about August 19, 2010, in
9 violation of the employment contract.

10 8. Plaintiff commenced employment at U.S. Bank's Irvine branch in or around
11 December 2008 as a Teller Coordinator. Within approximately six (6) months of his employment,
12 he was promoted to the position of "Co-Branch Manager." Plaintiff performed his job with
13 diligence and professionalism. Plaintiff was terminated in or around August 2010.

14 9. During Plaintiff's employment, Defendant U.S. Bank did not honor its agreements
15 with Plaintiff. Plaintiff was not paid overtime, yet he was consistently required to work more than
16 eight (8) hours per day and/or more than forty (40) hours per week.

17 10. Plaintiff also did not have time to take lunches or breaks during the workday. On
18 average, Plaintiff took lunch about two (2) times per workweek; and even then, his lunch would be
19 interrupted by cellular phone calls seeking his assistance. Additionally, while Defendant U.S.
20 Bank required Plaintiff to report to work about thirty (30) minutes before the branch was officially
21 open and to stay behind about thirty (30) minutes after the branch was officially closed to address
22 opening/closing issues, Defendant U.S. Bank refused to compensate Plaintiff. Similarly, Plaintiff
23 was refused compensation for the times when he came into work on his off-days to address calls
24 for assistance from branch employees who could not reach Amselem, the branch supervisor.

25 11. On numerous occasions, Plaintiff complained to Amselem that he was refused
26 proper compensation for the work he had performed. In response, Amselem threatened to cut
27 Plaintiff's scheduled work hours. Amselem also instructed Plaintiff to indicate on his timecard that

1 a meal period was taken (even when it was rarely, if ever taken, and even when taken, it was not
2 uninterrupted).

3 12. On information and belief, Plaintiff was not the only employee of Defendant U.S.
4 Bank who complained about being subject to Amselem's intimidating, threatening conduct. About
5 two (2) weeks before Defendant U.S. Bank terminated Plaintiff, Plaintiff had advised a couple of
6 branch employees to contact Defendant U.S. Bank's purportedly anonymous ethics hotline to
7 report their complaints about Amselem. Not long after, Plaintiff, on information and belief, was
8 contacted by Human Resources ("HR") and asked whether Plaintiff knew anything negative about
9 the employee who had phoned in an ethics complaint against Amselem. In this call, Plaintiff
10 advised HR that he had witnessed Amselem assail branch employees with obscenities including
11 four-letter words.

12 13. Then, on or about August 19, 2010, Plaintiff was terminated. At the time of his
13 separation, Plaintiff was earning approximately \$19.50 per hour.

14 FIRST CAUSE OF ACTION

15 BREACH OF CONTRACT

16 (Against Defendant U.S. Bank and DOES 1 through 10)

17 14. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this
18 Complaint as if fully set forth at this place.

19 15. In or around December 2008, Plaintiff and Defendant U.S. Bank entered into an
20 employment agreement that included oral, written, and implied in fact agreements. The basic
21 terms of the agreement provided that Plaintiff's employment would be secure for as long as his
22 performance was satisfactory, that he would not be terminated without good cause, that his job
23 security would not be threatened, that he would not be required to perform unlawful activities, that
24 he would earn agreed-upon wages, and that he would be compensated fairly and legally for hours
25 worked.

26 16. Plaintiff has performed all and/or substantially all the conditions, covenants and
27 promises which he was required to perform in accordance with the terms and conditions of the
28 subject oral, written, implied-in-fact contract between Plaintiff and Defendant U.S. Bank.

1 17. All of the conditions required for Defendant U.S. Bank's performance had occurred.

2 18. Defendant U.S. Bank breached the oral, written, implied-in-fact contract by failing
3 to pay Plaintiff his wages when those monies were due and by refusing to allow Plaintiff to take his
4 meal and rest breaks, all during Plaintiff's employment with Defendants. Defendant U.S. Bank's
5 performance was not excused nor waived.

6 19. As a direct and proximate result of the breach of said agreements by Defendants,
7 Plaintiff has suffered general damages for mental and emotional distress, along with special
8 damages, in a sum according to proof, but which amount exceeds the jurisdictional minimum of
9 this Court, with interest thereon at the maximum legal rate.

10 SECOND CAUSE OF ACTION

11 RETALIATION IN VIOLATION OF CALIFORNIA LABOR CODE §§ 1102.5, ET SEQ.

12 (Against Defendant U.S. Bank and DOES 1 through 10)

13 20. Plaintiff realleges and incorporates herein paragraphs 1 through 13 of this complaint
14 as though fully set forth at this place.

15 21. At all times mentioned herein California Labor Code sections 1102.5, *et seq.*, were
16 in full force and effect and were binding on Defendants and each of them

17 22. California Labor Code section 1102.5(a) states in full, "An employer may not make,
18 adopt, or enforce any rule, regulation, or policy preventing an employee from disclosing
19 information to a government or law enforcement agency, where the employee has reasonable cause
20 to believe that the information discloses a violation of state or federal statute, or a violation or
21 noncompliance with a state or federal rule or regulation."

22 23. California Labor Code section 1102.5(b) states in full, "An employer may not
23 retaliate against an employee for disclosing information to a government or law enforcement
24 agency, where the employee has reasonable cause to believe that the information discloses a
25 violation of state or federal statute, or a violation or noncompliance with a state or federal rule or
26 regulation."

27 24. California Labor Code section 1102.5(c) states in full, "An employer may not
28 retaliate against an employee for refusing to participate in an activity that would result in a

1 violation of state or federal statute, or a violation or noncompliance with a state or federal rule or
2 regulation.

3 25. During the course of Plaintiff's employment, Plaintiff complained to Amselem that
4 Amselem was infringing upon the privacy rights of Defendant U.S. Bank's customers by willfully
5 conducting unauthorized credit checks. In response, Amselem simply advised Plaintiff "not to
6 worry about it" and continued engaging in unethical conduct, in that Amselem would intentionally
7 misrepresent to bank customers that they had been pre-approved for a bank credit card or that the
8 bank was having a promotion on a new credit card, such that Amselem could perform unauthorized
9 credit checks on these customers.

10 26. Plaintiff further complained that neither he nor other branch employees was
11 receiving proper compensation for all hours worked and for missed and/or interrupted meal/rest
12 periods. In response, Defendants wrongfully terminated Plaintiff's employment.

13 27. The above acts of Defendants constitute repeated retaliation in violation of
14 California Labor Code section 1102.5; such retaliation was a proximate cause of Plaintiff's
15 damages as stated below.

16 28. As a proximate result of the aforesaid acts of Defendants and each of them, Plaintiff
17 has lost, and will continue to lose, earnings and fringe benefits and has suffered and/or will suffer
18 other actual, consequential and incidental financial losses, in an amount to be proven at trial in
19 excess of the jurisdictional minimum of this court. Plaintiff claims such amounts as damages
20 together with prejudgment interest pursuant to California Civil Code § 3287 and/or § 3288 and/or
21 any other provision of law providing for prejudgment interest.

22 29. As a proximate result of the aforesaid acts of Defendants and each of them, Plaintiff
23 has become mentally upset, distressed, embarrassed, humiliated, and aggravated. As a result of the
24 acts of retaliation, Plaintiff suffered harm to his reputation. Plaintiff claims general damages for
25 such mental and physical distress and aggravation in a sum in excess of the jurisdictional minimum
26 of this court.

27 30. Defendant U.S. Bank had in place policies and procedures that specifically forbid
28 Defendant U.S. Bank's managers, officers, and agents from retaliating, discharging, and
discriminating against employees who refused to participate in an activity that would result in a

1 violation of a state or federal statute, or a violation or noncompliance with a state or federal rule or
 2 regulation. Amselem was an owner, manager, officer, and/or agent of Defendant U.S. Bank and
 3 was aware of Defendant U.S. Bank's policies and procedures prohibiting retaliating, discharging,
 4 and discriminating against employees who refused to participate in an activity that would result in
 5 a violation of a state or federal statute, or a violation or noncompliance with a state or federal rule
 6 or regulation. Furthermore, Amselem maintained broad discretionary powers regarding staffing,
 7 managing, hiring, firing, contracting, supervising, assessing and establishing of corporate policy
 8 and practice in the defendant's facilities. However, Amselem chose to consciously and willfully
 9 ignore said policies and procedures and therefore, his outrageous conduct was fraudulent,
 10 malicious, oppressive, and was done in wanton disregard for the rights of Plaintiff and the rights
 11 and duties owed by each Defendant to Plaintiff. Each Defendant aided, abetted, participated in,
 12 authorized, ratified, and/or conspired to engage in the wrongful conduct alleged above. Plaintiff
 13 should, therefore, be awarded exemplary and punitive damages against each Defendant in an
 14 amount to be established that is appropriate to punish each Defendant and deter others from
 engaging in such conduct.

15 31. As a proximate result of the wrongful acts of Defendants, and each of them,
 16 Plaintiff has been forced to hire attorneys to prosecute his claims herein, and has incurred and is
 17 expected to continue to incur attorneys' fees and costs in connection therewith. Plaintiff is entitled
 18 to recover attorneys' fees and costs under the California Labor Code.

19 THIRD CAUSE OF ACTION

20 **FAILURE TO PAY EARNED WAGES**

21 **IN VIOLATION OF CALIFORNIA LABOR CODE §§ 204, 206, 210, 218.5, AND 218.6**

22 **(Against Defendant U.S. Bank and DOES 1 through 10)**

23
 24 32. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this
 25 Complaint as if fully set forth at this place.

26 33. Defendant U.S. Bank employed Plaintiff between December 2008 and August 2010,
 27 but Defendants failed and refused to pay Plaintiff all the wages that he earned working for

1 Defendant U.S. Bank during this period, as required by the California Employment Laws and
2 Regulations.

3 34. Plaintiff has been deprived of his rightfully earned wages as a direct and proximate
4 result of Defendants' failure and refusal to pay said compensation. Plaintiff is entitled to recover
5 such amounts, plus interest thereon, attorneys' fees and costs, and penalties, pursuant to Labor
6 Code §§ 204, 206, 210, 218.5, and 218.6.

7 35. Wherefore, Plaintiff requests relief as hereinafter provided.

8 **FOURTH CAUSE OF ACTION**

9 **FAILURE TO PAY OVERTIME COMPENSATION IN VIOLATION OF CALIFORNIA**

10 **LABOR CODE §§ 510 AND 1194**

11 **(Against Defendant U.S. Bank and DOES 1 through 10)**

12 36. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this
13 Complaint as if fully set forth at this place.

14 37. California Labor Code § 510 states that an employee must be paid for his overtime,
15 calculated as "[a]ny work in excess of eight hours in one workday and any work in excess of 40
16 hours in any one workweek and the first eight hours worked on the seventh day of work in any one
17 workweek shall be compensated at the rate of no less than one and one-half times the regular rate
18 of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the
19 rate of no less than twice the regular rate of pay for an employee..."

20 33. California Labor Code § 1194(a) provides: "Notwithstanding any agreement to
21 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
22 overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid
23 balance of the full amount of this minimum wage or overtime compensation, including interest
24 thereon, reasonable attorney's fees, and costs of suit."

25 34. Defendant U.S. Bank required Plaintiff to work more than forty hours per workweek
26 and/or more than eight hours in one workday, but Defendant U.S. Bank failed and refused to pay
27

1 Plaintiff the overtime compensation, in violation of the California Labor Code, Industrial Welfare
2 Commission ("IWC") wage orders and other applicable law.

3 35. Plaintiff has been deprived of his rightfully earned overtime compensation as a
4 direct and proximate result of Defendant U.S. Bank's failure and refusal to pay said compensation.
5 Plaintiff is entitled to recover such amounts, plus interest thereon, attorneys' fees and costs.

6 36. Wherefore, Plaintiff requests relief as hereinafter provided.

7 **FIFTH CAUSE OF ACTION**

8 **WAITING TIME PENALTIES**

9 **PURSUANT TO CALIFORNIA LABOR CODE §§ 201-203**

10 **(Against Defendant U.S. Bank and DOES 1 through 10)**

11 37. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this
12 Complaint as if fully set forth at this place.

13 38. California Labor Code §§ 201 and 202 require Defendant to pay its employees all
14 wages due within seventy-two (72) hours of termination of employment. California Labor Code §
15 203 states, in pertinent part, "If an employer willfully fails to pay, without abatement or
16 reduction...any wages of an employee who is discharged or who quits, the wages of the employee
17 shall continue as a penalty from the due date thereof at the same rate until paid or until an action
18 therefore is commenced; but the wages shall not continue for more than 30 days . . . Suit may be
19 filed for these penalties at any time before the expiration of the statute of limitations on an action
20 for the wages from which the penalties arise."

21 39. Defendant U.S. Bank failed to pay Plaintiff accrued wages and other compensation
22 due to him immediately upon his termination, as required. Specifically, Plaintiff was owed
23 overtime pay throughout his employment; however, Plaintiff was not paid for such overtime upon
24 his termination.

25 40. Based on Defendant U.S. Bank's conduct as alleged herein, Defendant U.S. Bank is
26 liable for civil penalties pursuant to California Labor Code § 203.

27 41. Plaintiff is entitled to an award of attorneys' fees and costs as set forth below.

28 42. Wherefore, Plaintiff requests relief as hereinafter provided.

SIXTH CAUSE OF ACTION

**FAILURE TO ALLOW MEAL AND REST BREAKS
IN VIOLATION OF CALIFORNIA LABOR CODE §§ 226.7 and 512**

(Against Defendant U.S. Bank and DOES 1 through 10)

43. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this Complaint as if fully set forth at this place.

44. California Labor Code § 226.7 states that "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission" and additionally, that "[i]f an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided."

45. California Labor Code § 512 (a) states in full, "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

46. Plaintiff did not receive ten (10) minute rest periods for every four (4) hours or major fraction thereof of work, as mandated by the California Labor Code and the applicable IWC wage orders. Furthermore, Plaintiff did not receive compensation at the rate of one hour's pay for each day he was deprived of his rest period(s).

47. Plaintiff did not receive his meal on the days he worked a five (5) hour or more shift. Additionally, Plaintiff did not receive a second meal period for days he worked a ten (10)

1 hour or more shift. Furthermore, Plaintiff did not receive compensation at the rate of one hour's
2 pay for each day he missed a meal break.

3 48. Plaintiff has been deprived of his right to meal periods and rest breaks as a direct
4 and proximate result of Defendants' failure and refusal to recognize said breaks, in violation of
5 California Labor Code §§ 226.7 and 512, and the applicable IWC wage orders. Therefore,
6 pursuant to California Labor Code § 226.7(b), Plaintiff is entitled to recover such amounts, plus
7 interest thereon, attorneys' fees and costs.

8 49. Wherefore, Plaintiff requests relief as hereinafter provided.

9 **SEVENTH CAUSE OF ACTION**

10 **INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE WAGE**

11 **STATEMENTS IN VIOLATION OF CALIFORNIA LABOR CODE § 226(a)**

12 **(Against Defendant U.S. Bank and Does 1 Through 10)**

13 50. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this
14 Complaint as if fully set forth at this place.

15 51. California Labor Code § 226(a) requires Defendants to itemize in wage statements
16 all deductions from payment of wages and to accurately report total hours worked by Plaintiff.
17 Defendants have knowingly and intentionally failed to comply with Labor Code § 226(a) on each
18 and every wage statement provided to Plaintiff. To wit, Plaintiff alleges that the wage statements
19 failed to accurately set forth all hours actually caused or suffered to work.

20 52. As a consequence of Defendants' knowing and intentional failure to comply with
21 Labor Code § 226(a), Plaintiff is entitled to actual damages not to exceed \$4,000 pursuant to Labor
22 Code § 226(b), together with interest thereon and attorneys' fees and costs.

23 53. Wherefore, Plaintiff requests relief as hereinafter provided.

24 **EIGHTH CAUSE OF ACTION**

25 **WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY**

26 **(Against Defendant U.S. Bank and DOES 1 through 10)**

1 54. Plaintiff incorporates by reference paragraphs 1 through 76, inclusive, of this
2 Complaint as if fully set forth at this place.

3 55. During Plaintiff's employment with Defendant U.S. Bank, Plaintiff opposed and
4 objected to Defendants' instruction that he work overtime hours without receiving compensation,
5 opposed and objected to Defendants' failure to compensate him for off-the-clock work performed,
6 opposed and objected to Defendants' failure to provide him breaks, and opposed and objected to
7 Defendants' failure to maintain the financial privacy of their bank customers. Defendants'
8 instructions and failure to remedy the problems Plaintiff complained of violate state and federal
9 laws, including but not limited to, California Labor Code §§ 201-203, 204, 206, 210, 218.5, 218.6,
10 232.5, 510, 512, and 1194.

11 56. As a result, and in retaliation against Plaintiff for his actions, each Defendant
12 subjected Plaintiff to adverse employment actions as described above, including but not limited to
13 terminating Plaintiff.

14 57. Plaintiff's termination occurred in violation of fundamental public policies of the
15 State of California, including but not limited to, the right to raise complaints he believed to be
16 meritorious, as well as his right to refuse to obey policies and procedures of Defendants that are
17 unlawful under California and federal law pursuant to California Labor Code § 1102.5(c), *inter*
18 *alia*.

19 58. The foregoing described adverse employment actions were taken in part
20 or in whole because of Plaintiff's objections and opposition to and resistance against Defendants'
21 actions, as well as Plaintiff's efforts to exercise his rights under the California Labor Code and
22 applicable law.

23 59. In engaging in the aforementioned conduct, each Defendant aided, abetted, incited,
24 compelled, and/or coerced unlawful employment practices in violation of the announced policy of
25 this state against such practices.

26 60. In addition, California Labor Code § 98.6 prohibits any person from discharging or
27 discriminating against an employee for, among other things, refusing to participate in an activity
28 made illegal by California Labor Code §§ 1101, *et seq.*, which includes California Labor Code §
1102.5(c). These and other similar state laws constitute fundamental public policy of the State of

1 California, and a person that retaliates against an employee for refusing to participate in the
2 employer's illegal practices violates such public policy.

3 61. As a proximate result of the conduct of each Defendant, Plaintiff has suffered
4 general and special damages in a sum according to proof, but which amount exceeds the
5 jurisdictional minimum of this Court, with interest thereon at the maximum legal rate.

6 62. As a result of the aforesaid acts of each Defendant, Plaintiff claims general damages
7 for mental and emotional distress and aggravation in an amount to be proven at the time of trial.

8 **NINTH CAUSE OF ACTION**

9 **UNFAIR BUSINESS PRACTICES IN VIOLATION OF CALIFORNIA BUSINESS AND**
10 **PROFESSIONS CODE §§ 17200, *ET SEQ.***

11 **(Against Defendant U.S. Bank and DOES 1 through 10)**

12 63. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this
13 Complaint as if fully set forth at this place.

14 64. Plaintiff hereby brings a claim for Unfair Business Practices against Defendants
15 pursuant to California Business and Professions Code §§ 17200, *et seq.* The conduct of these
16 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful
17 to Plaintiff and the general public. Plaintiff seeks to enforce important rights affecting the public
18 interest within the meaning of California Code of Civil Procedure § 1021.5.

19 65. California Business and Professions Code §§ 17200, *et seq.*, prohibit unlawful and
20 unfair business practices. Plaintiff is a "person" within the meaning of California Business and
21 Professions Code § 17204, and therefore has standing to bring this cause of action for injunctive
22 relief, restitution, and other appropriate equitable remedies.

23 66. California Labor Code § 90.5(a) articulates the public policies of this state to
24 enforce vigorously minimum labor standards, to ensure that employees are not required or
25 permitted to work under substandard and unlawful conditions, and to protect law-abiding
26 employers and their employees from competitors who lower their costs by failing to comply with
27 minimum labor standards.

1 67. Through the conduct alleged in this Complaint, each of these Defendants has acted
 2 contrary to these public policies, has violated specific provisions of the California Labor Code, and
 3 has engaged in other unlawful and unfair business practices in violation of California Business and
 4 Profession Code §§ 17200, *et seq.*, depriving Plaintiff of rights, benefits, and privileges guaranteed
 5 to all employees under the law.

6 68. Each of these Defendants' conduct, as alleged hereinabove, constituted unfair
 7 competition in violation of §§ 17200, *et seq.*

8 69. Defendants, by engaging in the conduct herein alleged, by failing to pay Plaintiff earned
 9 wages and overtime compensation, either knew or in the exercise of reasonable care should have known
 10 that the conduct was unlawful.

11 70. As a proximate result of the above mentioned acts of these Defendants, Plaintiff is
 12 entitled to restitution for all of Defendants' ill-gotten gains.

13 71. Unless restrained by this Court, these Defendants will continue to engage in the
 14 unlawful conduct as alleged above. Pursuant to the California Business and Professions Code, this
 15 Court should make such orders or judgments, including the appointment of a receiver, as may be
 16 necessary to prevent the use or employment, by these Defendants, their agents or employees, of
 17 any unlawful or deceptive business practice, disgorgement of profits which may be necessary to
 18 restore to Plaintiff and Defendants' clients the money these Defendants have unlawfully failed to
 19 pay them.

20 72. Plaintiff further seeks attorney's fees pursuant to California Code of Civil Procedure
 21 § 1021.5.

22 TENTH CAUSE OF ACTION

23 DEFAMATION

24 (Against Defendants and DOES 1 through 10)

25 73. Plaintiff incorporates by reference paragraphs 1 through 13, inclusive, of this
 26 Complaint as if fully set forth at this place.

27 74. At or around the time of Plaintiff's separation from Defendant U.S. Bank,
 28 Defendant Allen, Defendant U.S. Bank's HR Generalist, instructed Plaintiff to list his name and

1 mobile phone as a reference to give to prospective employers. Defendant Allen assured Plaintiff
2 that nothing negative would be said about Plaintiff's former employment with Defendant U.S.
3 Bank.

4 75. To date, Plaintiff has undergone multiple job interviews, after which Plaintiff has
5 been told that the prospective employer is interested in hiring him after conducting a reference
6 check with Plaintiff's former employer. Plaintiff has listed Defendant Allen's name and mobile
7 number as a reference, pursuant to Defendant Allen's representations to do so. To date, Plaintiff
8 has been unable to seek new employment.

9 76. Plaintiff is informed and believes and thereon alleges that Defendants, and each of
10 them, by herein described acts, conspired to, and in fact, did negligently, recklessly, and
11 intentionally cause excessive unsolicited internal and external publications of defamation, of and
12 concerning Plaintiff, to third persons. These false and defamatory statements included express and
13 implied accusations that Plaintiff was an unsatisfactory employee.

14 77. Plaintiff is informed and believes and thereon alleges that during the above-
15 described time-frame Defendants, and each of them, by herein described acts, conspired to, and in
16 fact, did negligently, recklessly, and intentionally cause excessive unsolicited internal and external
17 publications of defamation, of and concerning Plaintiff, to third persons. Those third person(s) to
18 whom these Defendants published this defamation are believed to include, but are not limited to,
19 other agents and employees of Defendants, the community, and, directly or indirectly, potential
20 employers of Plaintiff.

21 78. Plaintiff is informed, believes and fears that these false and defamatory per se
22 statements will continue to be published by Defendants, and each of them, and will be foreseeably
23 republished by their recipients, all to the ongoing harm and injury to Plaintiff's business,
24 professional, and personal reputations. Plaintiff also seeks redress in this action for all foreseeable
25 republishments, including his own compelled self-publication of these defamatory statements.

26 79. The defamatory meaning of all of the above-described false and defamatory
27 statements and their reference to Plaintiff, were understood by these above referenced third person
28 recipients and other members of the community who are known to Defendants, and each of them,
but are unknown to Plaintiff at this time.

- 15 -

Complaint

1 80. None of Defendants' defamatory publications against Plaintiff referenced above are
2 true.

3 81. The above defamatory statements were understood as assertions of fact, and not as
4 opinion. Plaintiff is informed and believes this defamation will continue to be negligently,
5 recklessly, and intentionally published and foreseeably republished by Defendants, and each of them,
6 and foreseeably republished by recipients of Defendants' publications, thereby causing additional
7 injury and damages for which Plaintiff seeks redress by this action.

8 82. Each of these false defamatory per se publications (as set forth above) were
9 negligently, recklessly, and intentionally published in a manner equaling malice and abuse of any
10 alleged conditional privilege, which Plaintiff denies existed, since the publications, and each of
11 them, were made with hatred, ill will, and an intent to vex, harass, annoy, and injure Plaintiff in
12 order to justify the illegal and cruel actions of Defendants, and each of them, to cause further
13 damage to Plaintiff's professional and personal reputation, to cause him to quit, to justify an
14 eventual termination, and to retaliate against Plaintiff for complaints he made about being
15 subjected to unfair labor practices by Defendants and witnessing his immediate supervisor
16 engaging in illegal credit checks of bank customers without prior authorization.

17 83. Each of these publications by Defendants, and each of them, was made with
18 knowledge that no investigation supported the unsubstantiated and obviously false statements, and
19 without investigation into the current state of law or the policies of Defendant U.S. Bank.
20 Defendants, and each of them, published these statements knowing them to be false, and
21 unsustained by any reasonable investigation. These acts of publication were known by Defendants,
22 and each of them, to be negligent and reckless. In fact, not only did Defendants, and each of them,
23 have no reasonable basis to believe these statements but they also had no belief in the truth of these
24 statements. Defendants, and each of them, excessively, negligently, and recklessly published these
25 statements to individuals with no need to know, and who made no inquiry, and who had a mere
26 general or idle curiosity of this information.

27 84. The above complained-of publications by Defendants, and each of them, were made
28 with hatred and ill will towards Plaintiff and the design and intent to injure Plaintiff, Plaintiff's
reputation, employment and employability. Defendants, and each of them, published these

- 16 -

Complaint

1 statements not with the intent to protect any interest intended to be protected by any privilege, but
 2 with negligence, recklessness and/or intent to injure Plaintiff and destroy his reputation. Therefore,
 3 no privilege existed to protect any of the Defendants from liability for any of these aforementioned
 4 publications or republications.

5 85. As a legal result of the publication and republications of these defamatory
 6 statements by Defendants, and each of them, Plaintiff has suffered injury to his personal, business,
 7 and professional reputation including suffering embarrassment, humiliation, severe emotional
 8 distress, anguish, fear, loss of employment and employability, and significant economic loss in the
 9 form of lost wages and future earnings, all to Plaintiff's economic, emotional, and general damages
 10 in an amount according to proof.

11 86. Defendants, and each of them, committed the acts alleged herein recklessly,
 12 maliciously, fraudulently, and oppressively, with the wrongful intention of injuring Plaintiff, for an
 13 improper and evil motive amounting to malice, as described above, and which abused and/or
 14 prevented the existence of any conditional privilege, which in fact did not exist, and with reckless
 15 and conscious disregard of Plaintiff's rights. All actions of Defendants, and each of them, their
 16 agents and employees, herein alleged were known, ratified and approved by Defendants, and each
 17 of them. Plaintiff thus is entitled to recover punitive and exemplary damages from Defendants, and
 18 each of them, for these wanton, obnoxious, and despicable acts in an amount based on the wealth
 and ability to pay according to proof at time of trial.

19 87. As a proximate result of the aforeseaid acts of Defendants, and each of them,
 20 Plaintiff has suffered actual, consequential and incidental financial losses, including without
 21 limitation, loss of salary and benefits, and the intangible loss of employment related opportunities
 22 in his field and damage to his professional reputation, all in an amount subject to proof at the time
 23 of trial. Plaintiff claims such amounts as damages pursuant to Civil Code §§ 3287 and/or 3288
 24 and/or any other provision of law providing for prejudgment interest.

25 88. As a proximate result of the wrongful acts of Defendants, and each of them, Plaintiff
 26 has suffered and continues to suffer emotional distress, humiliation, mental anguish and
 27 embarrassment, as well as the manifestation of physical symptoms. Plaintiff is informed and
 28 believes and thereupon alleges that he will continue to experience said physical and emotional

- 17 -

Complaint

1 suffering for a period in the future not presently ascertainable, all in an amount subject to proof at
2 the time of trial.

3 89. The acts taken toward Plaintiff were carried out by Defendant's officers, directors,
4 and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate,
5 egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff,
6 thereby justifying an award of punitive damages in a sum appropriate to punish and make an
7 example of Defendants, and each of them.

8
9 **ELEVENTH CAUSE OF ACTION**

10 **VIOLATION OF LABOR CODE §§ 1050, et seq.**

11 **(Against Defendants and Does 1 through 10)**

12 90. Plaintiff incorporates by reference paragraphs 1 through 13, 94 and 95, inclusive, of
13 this Complaint as if fully set forth at this place.

14 91. Plaintiff is informed and believes and thereupon alleges that Defendants have made
15 and are continuing to make misrepresentations about Plaintiff that have prevented Plaintiff from
16 obtaining employment and/or from earning a livelihood.

17 92. Plaintiff is informed and believes and thereupon alleges that Defendants knowingly
18 caused, suffered or permitted various individuals to make misrepresentations about Plaintiff that
19 prevented or attempted to prevent Plaintiff from obtaining employment and/or from earning a
20 livelihood.

21 93. Plaintiff is informed and believes and thereupon alleges that Defendants failed to
22 take all reasonable steps within their power to prevent various individuals, including Defendant
23 Allen, from making misrepresentations about Plaintiff that prevented or attempted to prevent
24 Plaintiff from obtaining employment and/or from earning a livelihood.

25 94. As a result of the above actions, Plaintiff has lost and is continuing to lose
26 employment opportunities and income that he would have been able to earn.

27 95. As a direct, foreseeable, and proximate result of Defendants' wrongful acts, Plaintiff
28 has lost and will continue to lose income and benefits, and has suffered and continues to suffer

1 emotional distress, humiliation, mental anguish and embarrassment all to Plaintiff's damage, the
2 precise amount of which will be proven at trial.


3 96. The acts taken toward Plaintiff were carried out by Defendant's officers, directors,
4 and/or managing agents acting in a despicable, oppressive, fraudulent, malicious, deliberate,
5 egregious, and inexcusable manner and in conscious disregard for the rights and safety of Plaintiff,
6 thereby justifying an award of punitive damages in a sum appropriate to punish and make an
7 example of Defendants, and each of them.

8 WHEREFORE, Plaintiff prays for judgment as follows:

- 9 1. For general damages, according to proof;
- 10 2. For special damages, according to proof;
- 11 3. For penalties, pursuant to the California Labor Code and the Unfair Business
12 Practices Act, according to proof;
- 13 4. For all actual, consequential and incidental financial losses, including, but not
14 limited to, loss of earnings and employee benefits, according to proof;
- 15 5. For attorneys' fees, according to proof;
- 16 6. For an award of interest on all unpaid amounts due and owing Plaintiff to the
17 extent provided by law;
- 18 7. For punitive and exemplary damages, according to proof;
- 19 8. For costs of suit incurred herein; and
- 20 9. For such other relief and the Court may deem just and proper

21
22
23 Date: August 14, 2012

OLSEN LAW OFFICES

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25 _____
26 Christopher A. Olsen
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DEMAND FOR JURY

Plaintiff hereby requests a trial by jury.

Date: August 17, 2012

OLSEN LAW OFFICES



Christopher A. Olsen

EXHIBIT B

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 Joan B. Fife Tucker (SBN: 144572)
jbfife@winston.com
2 WINSTON & STRAWN LLP
101 California Street
3 San Francisco, CA 94111-5894
(415) 591-1000
4 (415) 591-1400
5 Emilie C. Woodhead (SBN: 240464)
ewoodhead@winston.com
6 WINSTON & STRAWN LLP
333 S. Grand Avenue
7 Los Angeles, CA 90071-1543
Telephone: (213) 615-1700
8 Facsimile: (213) 615-1750
9 Attorneys for Defendant
U.S. BANK NATIONAL ASSOCIATION

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF ORANGE**
14

15 JAMES WICKSNIN, JR.,
16 Plaintiff,

17 vs.

18 U.S. BANK NATIONAL ASSOCIATION, a
19 Delaware Corporation, and DOES 1-10,
inclusive,
20 Defendants

Case No. 30-2012-00591837-CU-WT-CJC

ASSIGNED FOR ALL PURPOSES TO:

Hon. Derek W. Hunt
Department C24

ANSWER OF DEFENDANT U.S. BANK
NATIONAL ASSOCIATION TO
PLAINTIFF'S COMPLAINT

ELECTRONICALLY FILED
Superior Court of California,
County of Orange

11/15/2012 at 08:00:00 AM
Clerk of the Superior Court
By Maria Gina Barr, Deputy Clerk

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

1 Defendant U.S. BANK NATIONAL ASSOCIATION ("Defendant") hereby answers the
2 unverified Complaint ("Complaint") of Plaintiff JAMES WICKSNIN, JR. ("Plaintiff") in the above-
3 captioned matter, for itself and for no other Defendant by admitting, denying, and alleging as
4 follows:

5 **GENERAL DENIAL**

6 Pursuant to California Code of Civil Procedure § 431.30(d), Defendant generally denies each
7 and every allegation contained in the Complaint. Defendant further denies that Plaintiff is entitled to
8 any relief, and denies that Plaintiff was damaged in the nature alleged, or in any other manner, or at
9 all. Further, Defendant denies that Plaintiff has sustained any injury, damage or loss by reason of
10 any conduct, action, error or omission on the part of Defendant, or any agent, employee or any other
11 person acting under Defendant's authority or control.

12 As and for separate and additional defenses to each of Plaintiff's purported causes of action,
13 without conceding that it bears the burden of proof or persuasion as to any of the issues raised in
14 these defenses, Defendant alleges as follows:

15 **AFFIRMATIVE DEFENSES**

16 Without waiving any of the foregoing answers or defenses, as separate and distinct
17 affirmative defenses to Plaintiff's Complaint, Defendant alleges as follows:

18 **FIRST AFFIRMATIVE DEFENSE**

19 **(Failure to State Facts Sufficient to Constitute a Cause of Action)**

20 1. The Complaint, and each purported cause of action alleged therein, fails to state facts
21 sufficient to state a cause of action against Defendant.

22 **SECOND AFFIRMATIVE DEFENSE**

23 **(Statute of Limitations)**

24 2. Plaintiff's claims are barred by operation of the applicable statutes of limitation,
25 including, but not limited to, California Government Code § 12960 and California Code of Civil
26 Procedure §§ 335.1, 338, 339, and 340.

27 ///

28 ///

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333 S. Grand Avenue
Los Angeles, CA 90071-1543

THIRD AFFIRMATIVE DEFENSE

(Legitimate, Non-Retaliatory, Non-Discriminatory Reasons)

3. Plaintiff's claims are barred, in whole or in part, because all acts of Defendant affecting the terms and/or conditions of Plaintiff's employment were done in good faith and motivated by legitimate, non-retaliatory, and non-discriminatory reasons and/or the result of business necessity.

FOURTH AFFIRMATIVE DEFENSE

(Truth)

4. Plaintiff's claims are barred, in whole or in part, because if any agent or employee of Defendant made any statement that can be construed as defamatory, and Defendant does not admit that any did, the statements were not false.

FIFTH AFFIRMATIVE DEFENSE

(Qualified Privilege)

5. Plaintiff's claims are barred, in whole or in part, because the alleged misrepresentations and/or defamatory statements of which Plaintiff complains, if made by Defendant's agent or employee, were made without any feelings by Defendant of hatred or ill will for Plaintiff and to persons who were interested in the subject matter of the communications. If such statements were made, Defendant was also interested in the subject matter of the communications and had an innocent motive in making the statements complained of or were requested to make the statements and are therefore eligible for qualified privilege under California Civil Code § 47(c).

SIXTH AFFIRMATIVE DEFENSE

(Waiver)

6. Plaintiff's causes of action are barred, in whole or in part, by the equitable doctrine of waiver because, by conduct, representations, and omissions, Plaintiff has waived, relinquished, and/or abandoned any claim for relief against Defendant with respect to the matters that are subject of the Complaint.

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Los Angeles, CA 90071-1543

SEVENTH AFFIRMATIVE DEFENSE

(Laches)

7. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of laches.

EIGHTH AFFIRMATIVE DEFENSE

(Estoppel)

8. Plaintiff's claims are barred, in whole or in part, by the equitable doctrine of estoppel.

NINTH AFFIRMATIVE DEFENSE

(Internal Grievance Procedure)

9. Plaintiff's causes of action are barred, in whole or in part, because Plaintiff failed to exhaust internal grievance procedures provided by Defendant U.S. Bank National Association.

TENTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

10. Plaintiff is barred, in whole or in part, from recovering the relief he seeks because he failed to take all reasonable, necessary, and appropriate action to mitigate any purported damages allegedly resulting from the matters set forth in the Complaint.

ELEVENTH AFFIRMATIVE DEFENSE

(Arbitration is Condition Precedent to Suit)

11. Plaintiff's claims are barred, in whole or in part, because, pursuant to agreements entered into by Plaintiff, arbitration is a condition precedent to commencement and maintenance of this action and the action is barred by the absence of arbitration. By filing its response, Defendant has not waived its right to arbitration in this matter.

TWELFTH AFFIRMATIVE DEFENSE

(Third Party Liability)

12. Plaintiff's causes of action are barred, in whole or in part, because the proximate cause of any alleged causes of action and injuries are due to a third party or to others, over whom Defendant had no right of control.

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Los Angeles, CA 90071-1543

THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Use Ordinary Care and Diligence)

13. Any recovery on Plaintiff's Complaint is barred, including by California Labor Code §§ 2854 and 2856, in that Plaintiff failed to use ordinary care and diligence in the performance of his duties and failed to comply substantially with the reasonable directions of his employer.

FOURTEENTH AFFIRMATIVE DEFENSE

(Lack of Knowledge)

14. Plaintiff's causes of action are barred in whole or in part because Defendants did not have knowledge of Plaintiff's allegations.

FIFTEENTH AFFIRMATIVE DEFENSE

(Unauthorized Conduct)

15. If any agent or employee of any Defendant engaged in any alleged conduct that can be construed as tortuous conduct, unlawful discrimination, harassment, and/or retaliation, and Defendant does not admit that any did, such conduct was unauthorized and outside of the course and scope of such individual's agency or employment.

SIXTEENTH AFFIRMATIVE DEFENSE

(Failure to Establish Respondeat Superior)

16. Any recovery on Plaintiff's Complaint, or any purported cause of action alleged therein, is barred because Plaintiff may not bring an action at law against the employer by invoking respondeat superior or any other legal theory for any alleged injury that Plaintiff sustained, caused by an employee of Defendant.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Privileged, Good Faith, & Justified Conduct)

17. Without admitting that Defendant engaged in any of the alleged conduct in this lawsuit, Defendant contends that its conduct was at all times justified, privileged, and undertaken in good faith and without any intent to injure Plaintiff.

///

///

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Los Angeles, CA 90071-1543

EIGHTEENTH AFFIRMATIVE DEFENSE

(Causation/Contribution)

18. Plaintiff's claims are barred, in whole or in part, because the claims alleged in the Complaint were proximately caused by, occurred, and/or were contributed to by Plaintiff's own acts or failures to act. Defendant's acts or omissions to act were not the cause in fact or proximate cause of any injury that Plaintiff now claims.

NINETEENTH AFFIRMATIVE DEFENSE

(Punitive/Exemplary Damages Unconstitutional)

19. The Complaint fails to state facts sufficient to recover exemplary or punitive damages, and application of the punitive damages statute or standard violates the due process and excessive fine clauses of the Fifth, Eighth, and Fourteenth Amendments of the United States Constitution, as well as the Constitution of the State of California.

TWENTIETH AFFIRMATIVE DEFENSE

(No Entitlement to Punitive Damages)

20. Plaintiff is precluded from recovering punitive damages, in whole or in part, because Defendant at all times acted without oppression, fraud, or malice, and Plaintiff cannot demonstrate facts sufficient to allow recovery of punitive damages against Defendant.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Failure to Establish Attorneys' Fees)

21. The Complaint fails to allege facts sufficient to establish a claim for attorneys' fees.

TWENTY-SECOND AFFIRMATIVE DEFENSE

(Other Defenses)

22. Defendant currently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. To the extent not set forth herein, Defendant reserves the right to assert additional defenses that become available or apparent during discovery and to amend its Answer accordingly.

///

///

Winston & Strawn LLP
333 S. Grand Avenue
Los Angeles, CA 90071-1543

PRAYER

WHEREFORE, Defendant prays for judgment against Plaintiff as follows:

- I. That Plaintiff takes nothing by the Complaint;
- II. That judgment be entered in favor of Defendant and against Plaintiff, on all remaining causes of action;
- III. That Defendant be awarded reasonable attorneys' fees according to proof;
- IV. That Defendant be awarded the costs of suit herein incurred; and
- V. That Defendant be awarded such other and further relief as the Court may deem appropriate.

Dated: November 14, 2012

WINSTON & STRAWN LLP

By: Emilie C. Woodhead /jsc
Emilie C. Woodhead
Attorneys For Defendants
U.S. BANK NATIONAL ASSOCIATION

PROOF OF ELECTRONIC SERVICE

Superior Court of California, County of Orange

Case No. 30-2012-00591837-CU-WT-CJC

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is Winston & Strawn LLP, 333 S. Grand Avenue, Los Angeles, CA 90071-1543.

On November 14, 2012, I affected electronic service of the foregoing document(s) described as ANSWER OF DEFENDANT U.S. BANK NATIONAL ASSOCIATION TO PLAINTIFF'S COMPLAINT on the interested parties listed below:

Christopher A. Olsen
Olsen Law Offices
1010 Second Avenue, Suite 1835
San Diego, CA 92101

Hon. Derek W. Hunt
Orange County Superior Court
Dept. C24
700 Civic Center Drive West
Santa Ana, CA 92701

By submitting an electronic version of the document(s) to One Legal, LLC, through the user interface at www.onelegal.com.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signed: _____

Lucy Fera

Dated: November 14, 2012

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/> James Wicksnin, Jr.	DEFENDANTS U.S. Bank National Association, a Delaware Corporation, and DOES 1-10, inclusive
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Christopher Olsen -- OLSEN LAW OFFICES 1010 Second Avenue, Suite 1835, San Diego, CA 92101 (619) 550-9352	Attorneys (If Known) Joan B. Tucker Fife/Emilie C. Woodhead WINSTON & STRAWN LLP 101 California Street, Suite 3900, San Francisco, CA 94111 (415) 591-1000

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input checked="" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"> <tr> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input checked="" type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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IV. ORIGIN (Place an X in one box only.)

☐ 1 Original Proceeding
☒ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify):
☐ 6 Multi-District Litigation
☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: **JURY DEMAND:** ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☐ Yes ☒ No **MONEY DEMANDED IN COMPLAINT:** \$ _____

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
28 U.S.C. 1332, 28 U.S.C. 1441; 28 U.S.C. 1446

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General Habeas Corpus <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE / PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety /Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input checked="" type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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By Fax

FOR OFFICE USE ONLY: Case Number: **SACV12 - 02007 RNB**

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

 **ORIGINAL**

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.

☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.

☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Hamilton County, Ohio

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.

Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): Emilie C. Woodhead Date 11/16/12

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))